IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.MC.No. 4657 of 2003()

ST.3980/2003 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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PETITIONER: ACCUSED.

P.N.ASHARAF, S/O.MAMMED KOYA,
PALLIKANDY HOUSE, NALAKATH, AZHEEKODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE.

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1. THE SUB INSPECTOR OF POLICE, VYTHIRI.

2. THE CIRCLE INSPECTOR OF POLICE,
VYTHIRI.

3. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON 16/10/2007 PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.M.C.No.4657 of 2003-B

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Dated this the 16th day of October, 2007

O R D E R

The petitioner who is the second accused in S.T.No.3980/2003 in the file of the Chief Judicial Magistrate, Kalpetta, has sought for getting quashed the proceedings initiated against him under Section 3(2)(a)(b), 5(1)(a)(c), 7(2)(c) of the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred to as the Act), alleging that the prosecution is totally vitiated. The prosecution case is that on 20/05/2003 in the night, the accused Nos.1 to 8 were found involved in immoral activities at house No.V.P.VIII/174-C situated at Vythiri. The specific allegation against the second accused, the petitioner, is that he brought the sixth accused a lady to the house belonging to the first accused for the purpose of prostitution. The allegation against accused Nos.3 and 4 is that they brought accused Nos.7 and 8 to the same house for the above purpose. The case against the first accused is that he used the particular house as brothel. The points stressed by the counsel for the petitioner is that the investigation in the matter has been conducted and charge sheet submitted by the Dy.S.P,

Kalpetta, who is not the special police officer appointed. The Case Diary produced would show that it is the Circle Inspector of Police, Vythiri, who conducted the raid and arrested the accused. But subsequently, the investigation was taken over by the Dy.S.P and the case was investigated and charge sheet filed by the Dy.S.P. It is the specific contention that the Dy.S.P has no authority to investigate and file the charge sheet as the Circle Inspector is the special officer contemplated under the Statute and that the Court is not empowered to take cognizance of the matter on the basis of the charge sheet filed by a police officer who is not empowered.

2. As per S.R.O No.344/2002, dated 24/04/2002, issued under Section 13(1) of the Act, Circle Inspectors of Police attached to the police stations in the State mentioned therein are appointed as special police officers for dealing with offences under the Act. The date of offence in the instant case is 20/05/2003. Hence, on the particular date, the special police officer is indisputably the Circle Inspector of Police of the area.

3. The counsel for the petitioner has relied on the decision reported in **Smt. Tara v. The State [1965 (2) Crl.L.J. 179],** in which the Calcutta High Court has specifically found that the official report in the matter was submitted by a police officer who was not a special police officer appointed under Section 13(1) of the Act and hence, the court is not empowered to take cognizance of the same. The counsel has also relied on the decision in **State v. Mehro [AIR 1962 Punjab 91],** in which the Punjab High Court has held that the investigation by a police officer, who is not a special police officer under the Act, who is not invested specifically with the task of dealing with offences under the Act, is illegal. The court was considering 20 criminal revision petitions wherein the competence of a special police officer to investigate offences under the then Suppression of Immoral Traffic in Women and Girls Act, 1956, was considered. Therein, the investigation was conducted by police officer who was not a special police officer as defined under the Act. It is particularly noted therein that the special police officer as per the Statute is made to associate with a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare

workers wherever practicable) to advise him on questions of general importance regarding the working of the Act. Hence, it was held that it would be contrary to the intentions of the Legislature if the special police officer intends to get the matter investigated by another police officer who is not empowered vide Section 13(1) of the Act. It may be noted that Section 13(3)(b) retains the provision as to the envisaged association of the special police officer with the non-official advisory body. The counsel has also relied on the decision in **S & R of Legal Affairs v. Kshitish Chandra [AIR 1962 Calcutta 189],** wherein although the Assistant Commissioner of Police (the empowered officer under the then Act) had conducted the raid, the investigation was conducted by the officer-in-charge of the police station, who was an officer subordinate to the Assistant Commissioner of Police. The court found that the fact that Section 13 of the Act provides for appointment of special police officer by necessary implication it is intended to exclude the general police from taking cognizance and investigate offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956.

4. The counsel has also relied on the decision of the Supreme Court in **Delhi Administration v. Ram Singh [AIR 1962 SC 63]** wherein the three member bench of the Supreme Court by a majority has held in unmistakable terms that it is clear from various provisions of the Act that it is a complete Code with respect to what is to be done under it. The entire police duties in connection with the purposes of the Act within a certain area have been put in the charge of a special police officer; and that the expression, 'police duties' will include all the functions of the police in connection with the purpose of the Act; and in the special context of the Act, they will include the detection, prevention and investigation of the offences and the other duties which have been specially imposed on them under the Act. It was also noted that the Act contained certain special features like Section 15(2) which provides that special police officer is required to include atleast one woman among the search witnesses. It was noted that there is no such restriction in Section 103 of the Cr.P.C. The provision in Sections 15(4) and (5) that the girl found at the premises searched if under 21 years of age, is to be produced before the appropriate Magistrate; it is noted, is not also contained in Section 165 Cr.P.C.

Hence, it was held that provisions in the Act constituted a complete Code. It was further pointed out that if the power of the special police officer to deal with the offences under the Act, and therefore to investigate into the offences be not held exclusive, there would be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary police. It was noted that such duplication of proceedings would lead to much difficulties as there is nothing in the Act to co-ordinate the activities of the regular police with respect to cognizable offences under the Act and those of the special police officer. It is also noted that Section 15(1) of the Act starts with the non obstante clause that notwithstanding anything contained in any other law for the time being in force. In the above cited decision it was the Sub Inspector of Police who was not appointed as special officer to investigate the case investigated the case and submitted the charge sheet. That decision of the Supreme Court in **State Inspector of Police, Visakhapatnam v. Surya Sankaram Karri [JT 2006 (8) SC 177]** which was with respect to investigation under the Prevention of Corruption Act by an officer who was not empowered and who could have been authorised but

the authorisation not produced. The court found that the prosecution is bound to produce the written authorisation and in the absence of the same, the investigation by the officer who is not empowered by the Statute is illegal. The above infirmity was one of the major grounds on the basis of which the accused was acquitted. In view of the specific pronouncements of the Apex Court in the matter, I find that this is not a matter res integra of this Court to hold otherwise.

In view of the undisputed fact that the investigation has been conducted by an officer who is not a special officer appointed under Section 13(1) of the Act, I find that the entire investigation is vitiated and the proceedings cannot be sustained. Hence, the proceedings pending as S.T.No.3980/2003 in the file of the Chief Judicial Magistrate, Kalpetta, is herewith quashed. The Crl.M.C is allowed.

K.R.UDAYABHANU,
Judge

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